TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~427~~ 211

OLIVER T. MORGAN, EXECUTOR OF THE SUCCESSION OF OLIVER J. MORGAN, DECEASED, PLAINTIFF IN ERROR,

vs.

WILLIAM GAY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 1, 1872.

SUPREME COURT OF THE UNITED STATES.

No. 427.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth circuit and district of Louisiana.

W'M GAY
vs.
SUCCESSION OF OLIVER J. MORGAN. } No. 6209.

Petition.—Filed May 14th, 1870.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit, sitting at New Orleans, La.

The petition of William Gay, a citizen of Louisville, Kentucky, with respect, represents that the succession of Oliver J. Morgan, represented by Oliver T. Morgan, executor, which succession has been duly opened in Carroll Parish, Louisiana, and said executor being a citizen of Louisiana, as well as the heirs thereof, is justly and truly indebted unto your petitioner in the full sum of thirty-three thousand two hundred and fifty dollars, with 5 % interest from 10th January, 1861, on $13,000
2 thereof, until paid; and like interest on $10,250, from 16th of January, 1861, till paid, and like interest on $10,000, from 28th January, 1861, till paid; and $17.30 costs of protest and certificates for this, to wit: That your petitioner is the bona-fide holder and owner of three drafts or bills of exchange of the following tenor, date, and figures, two of which are executed by the def'd't, Oliver J. Morgan, in his life-time, he being a citizen of Louisiana, and the other accepted by him during his life-time.

$13.000.] PECAN GROVE, LA., *Jan'y 7th*, 1860.

Twelve months after date, pay to the order of H'y Goodrich thirteen thousand dollars, value received, and charge the same to account of—

(Signed) OLIVER J. MORGAN.

To Messrs. PILCHER & GOODRICH,
New Orleans, La.

(Written across the face:) Pilcher & Goodrich.

Which draft or bill is duly endorsed by said payee, and was duly accepted by the drawees, and another, as follows:

$10.250.] PECAN GROVE, LA., *Feb'y 2d*, 1860.

On the 13th day of Jan'y, 1861, pay to the order of myself, at the counting-house of Pilcher & Goodrich, New Orleans, La., ten thou-
3 sand two hundred and fifty dollars, value received, and charge the same to account of—

H. GOODRICH.

To O. J. MORGAN, *Pecan Grove.*

(Written across the face:) Oliver J. Morgan.

Which was duly endorsed by H'y Goodrich, and by Pilcher and Goodrich, and accepted by said O. J. Morgan, the drawee, and another, as follows:

$10,000.] PECAN GROVE, LA., *Feb'y 10th*, 1860.

On the 25th of January, 1861, pay to the order of H'y Goodrich, ten thousand dollars, value received, and charge the same to account of—

OLIVER J. MORGAN.

To Mess. PILCHER & GOODRICH,
New Orleans.

(Written across the face:) Pilcher & Goodrich.

Which was duly endorsed by said payee, all of which were duly protested for non-payment, and due notices given thereof, as will more fully p pear by the bills, protests, and certificates hereto annexed and made part of this petition.

Petitioner alleges amicable demand and refusal; and further alleges that the whole of said drafts are still due, owing, and unpaid, and that no part thereof has ever been paid.

4 Wherefore petitioner prays that said succession of Oliver J' Morgan, represented by said Oliver T. Morgan, executor, be duly cited to appear and answer this petition, and that, after due proceedings had, petitioner have judgment in his favor for the sum of thirty-three thousand two hundred and fifty dollars, with 5 % interest from 10th January, 1861, on $13,000 thereof; and like interest on $10,250, from 16th January, 1861; and like interest on $10,000, from 28th January, 1861, until paid; $17.30 cost of protest and certificate & costs of suit, and for all general and equitable relief.

(Signed) JULIUS ARONI,
(do.) DAVID C. LABATT,
(do.) EDGAR D. FARRAR,
Att'ys for Pl't'ff.

The originals of the above transcribed three drafts and the following protests of the same were filed May 14th, 1870, and offered in evidence by the plaintiff December 23d, 1870, with the following notes and protests:

Protest and draft filed in evidence Dec'r 23d, 1870.

UNITED STATES OF AMERICA,
State of Louisiana:

5 By this public instrument of protest be it known that, on this tenth day of January, in the year one thousand eight hundred and sixty-one, at the request of Mr. William Gay, holder of the original draft, whereof a true copy is on the reverse hereof written, I, Theodore Guyol, a notary public in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, presented the said draft to the acceptors and demanded payment thereof, and was answered that they could not pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested in the presence of W. G. Latham and Prosper Camus, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office at the city of New Orleans, on
6 the day and year first above written.

[SEAL.] (Signed) THEO. GUYOL,
Notary Public.

$13,000.] PECAN GROVE, LA., *Jan'y 7th*, 1860.

Twelve months after date, pay to the order of H'y Goodrich thirteen thousand dollars, value received, and charge the same to account of—
OLIVER J. MORGAN.

To Messrs. PILCHER & GOODRICH,
New Orleans, La.

(Written across the face:) Pilcher & Goodrich.

(Endorsed:) H. Goodrich, W'm Gay.

I acknowledge my indebtedness as endorser for the draft of which the above is a copy, this 12th Jan'y, 1867.
(Signed) H. GOODRICH.

The annexed draft of which the above is a copy, is acknowledged to be a just claim against the succession of Oliver J. Morgan, deceased, to be paid in due course of administration, and the note annexed, dated January 10th, 1861, payable nine months after date, was endorsed and given as a col'ateral to the above draft and in recognition thereof. Done this 3rd day of April, 1866.
(Signed) OLIVER T. MORGAN, *Ex'c'tr.*

7 Let the within claim be ranked as a just claim to be paid in due course of law.
April 5th, 1866.

E. D. FARRAR,
Judge 13th Dist.

Protest and note offered in evidence and filed December 23d, 1870.

STATE OF LOUISIANA:

By this public instrument of protest be it known that, on the twelfth day of October, in the year one thousand eight hundred and sixty-one, at the request of the New Orleans Canal and Banking Company, holder of the original note, whereof a true copy is on the reverse hereof written, I, Theodore Guyol, a notary public in and for the city of New Orleans and parish of Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented the said to the proper officer at the Canal Bank in this city where it is made payable, and demanded payment thereof, and was answered that no funds had been deposited there to pay the same.

8 Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be sufere d for want of payment of said note.

Thus done and protested in the presence of W. G. Latham and Prosper Camus, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) THEO. GUYOL,
Notary Public.

$13,000.] NEW ORLEANS, *January 10th*, 1861.

Nine months after date, I promise to pay to the order of O. T. Morgan, ex't'r of est. O. J. Morgan, at Canal Bank, New Orleans, thirteen thousand dollars, value received, with eight per cent. interest per annum, after maturity.

(Signed) H. GOODRICH.

9 (Endorsed:) OLIVER T. MORGAN,
Ex't'r Est. of O. J. Morgan.
PILCHER & GOODRICH.
W'M GAY.

Protest and draft offered in evidence and filed December 23d, 1870.

STATE OF LOUISIANA:

By this public instrument of protest be it known that, on this sixteenth day of November, in the year one thousand eight hundred and sixty-one, at the request of the New Orleans Canal and Banking Company, holder of the original draft, whereof a true copy is on the reverse hereof written, I, Theodore Guyol, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, by my deputy, W. G. Latham, presented the said draft to a clerk of the acceptors, at their office in this city, they not being in, where it is made payable, and demanded payment thereof, and was answered that no funds had been deposited there to pay the same.

Whereupon I, the said notary, at the request aforesaid, did
10 protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said draft.

Thus done and protested in the presence of W. G. Latham and Prosper Camus, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) THEO. GUYOL,
Notary Public.

$10,250.] PECAN GROVE, LA., *Feb'y 2d*, 1860.

On the thirteenth day of January, 1861, pay to the order of myself at the counting-house of Pilcher and Goodrich, New Orleans, La., ten thousand two hundred and fifty dollars, value received, and charge the same to account of

H. GOODRICH.

To O. J. MORGAN, *Pecan Grove, La.*

(Written across the face:) Oliver J. Morgan.

11 Endorsed by H. Goodrich, Pilcher & Goodrich, and W'm Gay.

The annexed draft, of which the above is a copy, is acknowledged to be a just claim against the succession of Oliver J. Morgan, deceased, to be paid in due course of administration, and the note annexed, dated January 16th, 1861, payable November 13th, 1861, was given as collateral to the above draft and in recognition thereof. Done this 3rd April, 1866.

OLIVER T. MORGAN,
Executor.

Let the within note be ranked as a just claim to be paid in due course of administration according to law.
April 5th, 1866.

E. D. FARRAR.

I also acknowledge my indebtedness for the draft of which above is a copy, this 12th January, 1867.

H. GOODRICH.

I also acknowledge my liability for the note of which the writing on the foregoing page is a true copy.

Protest and note offered in evidence and filed December 23d, 1870.

12 STATE OF LOUISIANA:

By this public instrument of protest be it known that, on this sixteenth day of November, in the year one thousand eight hundred and sixty-one, at the request of the New Orleans Canal & Banking Company, holder of the original note, whereof a true copy is on the reverse hereof written, I, Theodore Guyol, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, by my deputy, W. G. Latham, presented the said note to the proper officer at the Canal Bank, in this city, where it is made payable, and demanded payment thereof, and was answered that no funds had been deposited there to pay the same. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of said note.

13 Thus done and protested in the presence of W. G. Latham and Prosper Camus, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

THEO. GUYOL,
Notary Public.

$10,250.] NEW ORLEANS, *Jan'y 16th*, 1861.

On November 13th, 1861, after date, I promise to pay to the order of O. T. Morgan, executor of est. O. J. Morgan, at Canal Bank, N. O., ten thousand two hundred and fifty dollars, value received, with eight per cent. interest per an'um, after maturity, until paid.

(Signed) H. GOODRICH.

(Endorsed:) Oliver T. Morgan, ex'tr est. O. J. Morgan. Pilcher & Goodrich. W'm Gay.

Protest and draft offered in evidence and filed December 23d, 1870.

STATE OF LOUISIANA:

14 By this public instrument of protest be it known that, on this twenty-eighth day of January, in the year one thousand eight hundred and sixty-one, at the request of the New Orleans Canal and Banking Company, holder of the original draft, whereof a true copy is on the reverse hereof written, I, Theodore Guyol, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, by my deputy, W. G. Latham, presenting the said draft to a clerk of the acceptors at their office, they not being in, and demanding payment thereof, and was answered that the same could not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges and interests, suffered or to be suffered for want of payment of the said draft.

15 Thus done and protested, in the presence of William G. Latham and Prosper Camus, witnesses.

In testimony whereof I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) THEO. GUYOL,
Notary Public.

$10,000.] PECAN GROVE, LA., *Feb'y 10th*, 1860.

On the twenty-fifth of January, 1861, pay to the order of H'y Goodrich ten thousand dollars, value received, and charge the same to account of—

OLIVER J. MORGAN.

NEW ORLEANS, LA.

To Messrs. PILCHER & GOODRICH.

(Written across the face:) Pilcher & Goodrich.

(Endorsed:) H. Goodrich, W'm Gay.

I acknowledge my indebtedness for the draft, of which the above is a copy, this 12th Jan'y, 1867.

H. GOODRICH.

The annexed draft, of which the above is a copy, is acknowledged to be a just claim against the succession of Oliver J. Morgan, deceased, to be paid in due course of administration, and the note annexed

16 dated Jan'y 25th, 1861, payable eleven months after date, was given and endorsed as col'atteral to the above draft, and in recognition thereof. Done April 3rd, 1866.

OLIVER T. MORGAN, *Ex'tr.*

Let the note of O. J. Morgan to H. Goodrich, of which the above is a copy, be ranked among the acknowledged debts of the succession, to be paid in due course of administration according to law. April 5th, 1866.

E. D. FARRAR,
Judge 13th Dist.

Protest and note offered in evidence and filed Dec'br 23d, 1870.

STATE OF LOUISIANA:

By this public instrument of protest be it known that, on this twenty-eighth day of December, in the year one thousand eight hundred and sixty-one, at the request of the New Orleans Canal and Banking Company, holder of the original note, whereof a true copy is on the reverse hereof written, I, Theodore Guyol, a notary public in and for the
17 city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, by my deputy, W. G. Latham, presented the said note to the proper officer at the Canal Bank, in this city, where it is made payable, and, demanding payment thereof, was answered that no funds had been deposited to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of W. G. Latham and Prosper Camus, witnesses.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

THEO. GUYOL,
Notary Public.

18 $10,000.] NEW ORLEANS, *Januury 25th*, 1861.

Eleven months after date, I promise to pay to the order of O. T. Morgan, ex't'r of O. J. Morgan, at Canal Bank, N. O., ten thousand dollars, value received, with 8% interest per annum after maturity until paid.

(Signed) H. GOODRICH.

(Endorsed:) Oliver T. Morgan, ex'r est. O. J. Morgan. Pilcher & Goodrich. W'm Gray.

Answer.—Filed May 14th, 1870.

Circuit court of the United States, fifth judicial circuit, at New Orleans.

W'M GAY
vs.
SUCCESSION OF O. J. MORGAN.

Oliver T. Morgan, executor of the last will and testament of the late Oliver J. Morgan, dec'd, by his undersigned counsel, comes, and, for answer to plaintiff's petition in the foregoing styled suit, denies each and every allegation therein contained, and will, on trial, require strict proof thereof. He further pleads, in bar of the said action, prescription of five years. Therefore respondent prays that petitioner's demand be hence rejected and dismissed at his costs.

SPARROW & MONTGOMERY,
FERN M. GOODRICH,
Att'ys for Def'd't.

19 *Judgment.—From judgment-book.*

United States circuit court, fifth circuit and district of Louisiana, November term, 1870.

NEW ORLEANS, *Friday, December 23rd*, 1870.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.

W'M GAY
versus } 6209.
SUCCESSION OF O. J. MORGAN.

This cause was called for trial. Labatt and Aroni for plaintiff; Sparrow and Montgomery and F. M. Goodrich, for defendant, not present. When, after hearing the pleadings and the evidence, the plaintiff's case being fully made out, it is ordered, adjudged, and decreed that the plea of prescription be overruled, and that William Gay, plaintiff, do recover from the succession of Oliver J. Moran, represented by Oliver T. Moran, executor, the sum of thirty-three thousand two hundred and fifty dollars, with 5 % interest from January 10th, 1861, on $13,000, like interest on $10,250 from 16th January, 1861, and like interest on
20 $10,000 from 28th January, 1861, until paid, and $17.30 costs of protest and certificates and costs of suit.

Judgment rendered December 23d, 1870. Judgment signed January 12th, 1871.

E. H. DURELL, *Judge.*

Petition and order for writ of error.—Filed June 17th, 1872.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

The petition of Oliver T. Morgan, executor of the succession of Oliver J. Morgan, deceased, respectfully shows that a judgment was obtained by W'm Gay in the said circuit court on the 12th day of January, 1871, for the sum of $33,250, with interest and costs against him. Your petitioner is aggrieved by the said judgment because of the manifold errors therein, and because it is contrary to law, and should have been rendered for the defendant.

Your petitioner prays a writ of error and a citation, and here-
21 with tenders a bond for the sum of five hundred dollars, under the s'atute.

J. A. CAMPBELL,
Att'y for Petitioner.

JUNE 15TH, 1872.

Order.

A writ of error is allowed in this case as prayed for, and according to law returnable to the Supreme Court of the United States on the first Monday of December next, the petitioner giving bond in the sum of five hundred dollars, with good and solvent security, conditioned as the law directs.

June 17th, 1872.

E. H. DURELL, *Judge.*

Bond for writ of error.—Filed June 17th, 1872.

OLIVER T. MORGAN, EXECUTOR OF OLIVER J. Morgan, plaintiff in error,
vs.
W'M GAY, DEF'D'T IN ERROR. } No. 6209.

Know all men by these presents, that we, Oliver T. Morgan, executor of the succession of Oliver J. Morgan, deceased, as principal, and
22 Johnson and Goodrich as sureties, are held and firmly bound unto William Gay, in the full and just sum of five hundred dollars, to be paid to the said William Gay, *in the full and just sum of five hundred dollars to be paid to the said William Gay*, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 17th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas, lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein William Gay is plaintiff and the succession of Oliver J. Morgan, represented by Oliver T. Morgan, executor, is defendant, judgment was rendered against the said defendant; and the said Oliver T. Morgan, executor of the said succession of Oliver J. Morgan, having obtained a writ of error, and filed a
23 copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said William Gay, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Oliver T. Morgan, executor of the succession of Oliver J. Morgan, shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

FERD. M. GOODRICH, [L. S.]
Att'y for O. T. Morgan, Ex'tr.
JOHNSON & GOODRICH. [L. S.]

Sealed and delivered in the presence of—
F. B. VINOT.

Approved:

E. H. DURELL, *Judge.*

24 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 23 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial the case of William Gay vs. Succession of Oli-

ver J. Morgan, No. 6209 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 22d day of June, A. D. 1872.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

[5-c't int. rev. stamp, canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 22d day of June, A. D. 1872.

E. H. DURELL, *Judge.*

[5-c't int. rev. stamp, canceled.]

25 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you or one of you, between William Gay and the succession of Oliver J. Morgan, represented by Oliver T. Morgan, executor, a manifest error hath happened, to the great damage of the said succession of Oliver J. Morgan, represented by Oliver T. Morgan, executor, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 17th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 6209. Oliver T. Morgan, executor of the succ'n of Oliver J. Morgan, pl'ff in error, versus W'm Gay, def't in error. Writ of error. Filed June 17, 1872. F. B. Vinot, d'y cl'k.

26 THE UNITED STATES OF AMERICA,
United States Circuit Court, District of Louisiana:

The President of the United States to William Gay, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition & a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Oliver T. Morgan, executor of the succession of Oliver J. Morgan, deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said succession of Oliver J. Morgan, represented by Oliver T. Morgan, ex'r, as in said petition & writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 18th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

E. H. DURELL, *Judge.*

27 (Indorsed:) United States circuit court. No. 6209. Oliver T. Morgan, ex'r of the succ'n of Oliver J. Morgan, dec'd, plaintiff in error, vs. William Gay, defend't in error. Citation.

Marshal's return.

Received, June 18, 1872, and, on the 19th day of June, 1872, served a copy of within citation of appeal personally on Julius Aroni, att'y for William Gay, said William Gay being absent at the time.

New Orleans, June the 24th, 1872.

S. W. REED,
D'y U. S. Marshal.

(Indorsement on cover:) No. 427. Oliver T. Morgan, ex'or of the succession Oliver J. Morgan, dec'd, plaintiff in error, vs. William Gay. Louisiana C. C. U. S. Filed 1st October, 1872.

Supreme Court of United States

October Term, 1873.

No. 211.

OLIVER T. MORGAN, Ex'r.

vs.

WILLIAM GAY.

Error to the Circuit Court of the United States for the District of Louisiana.

STATEMENT.

This suit was commenced by petition in the Circuit Court against the defendant as executor of the will of O. J. Morgan, dec'd. The testator is charged in one instance as the drawee and acceptor of an *inland* Bill of Exchange, of which H. Goodrich is the drawer, and Pilcher & Goodrich the payees. In two other instances he is charged as the drawer of inland bills, of which Pilcher & Goodrich are the drawees, and Henry Goodrich the payee. The bills were protested for non-payment, and the bills and protests are filed with the petition. (Rec. 1, 2, 3.)

The defendant appeared and answered the petition denying all of the allegations, and pleaded the prescription of five years. (Rec. p. 7.)

The cause was called for trial the plaintiff being represented; the counsel for the defendant "*not present.*" The cause was submitted for hearing to the Court *without a jury*, and the Court overruled the plea, determined that the case was made out, and rendered a judgment for the plaintiff for the sum of the three Bills of Exchange, and interest and costs. (Rec. p. 8.)

ASSIGNMENTS OF ERROR.

1. There is no description of the plaintiff, other than that he is "a citizen of Louisville, Kentucky," which is deemed insufficient to give the Court jurisdiction.

2. The bills sued on are inland bills. The plaintiff does not allege that the payee and first endorser through whom his title is derived, is a citizen of a State other than the State of Louisiana, and therefore does not show a case within jurisdiction in the Court.

9 Wh., 537; 16 P., 315.

3. The cause was submitted to the Court in the absence of the defendant's counsel. There was no agreement in writing to waive a jury. It was not competent to the Court to render a judgment upon the issues joined except upon a verdict.

Norris vs. Jackson, 9 Wal., 125.

Kearny vs. Case, 12 Wal., 275-282.

The plaintiff submits the cause with a prayer that the judgment be reversed for the errors above set forth.

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